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Senate Bill 481 (as introduced 5-25-21)  
Sponsor: Senator Stephanie Chang  
Committee: Judiciary and Public Safety

Date Completed: 5-26-21

### **CONTENT**

**The bill would enact a new law to do the following:**

- Require each law enforcement agency to adopt, beginning six months after the bill's effective date, a use of force policy, and require the policy to meet the bill's requirements.**
- Allow a law enforcement agency to adopt a policy that exceeded the Act's requirements.**
- Require each law enforcement agency to update its policy continuously using the Michigan Commission on Law Enforcement Standards (MCOLES) subject control continuum and ensure that its updated policy complied with the Act and was consistent with case law precedent.**

### Definitions

"Deadly force" would mean any force that a reasonable person would consider likely to cause death or serious bodily harm. "Serious bodily harm" would mean any bodily injury that creates a substantial risk of death, permanent or temporary disfigurement, permanent or temporary loss or impairment of a function of any bodily limb or organ, or causes extreme physical pain.

"De-escalation technique" would mean a range of integrated strategies and tactics used by a law enforcement officer to diffuse a potentially volatile or violent situation with the aim to reduce the level of force required for resolution while ensuring the safety of the law enforcement officer and public.

"Law enforcement agency" and "law enforcement officer" would mean those terms as defined in the Michigan Commission on Law Enforcement Standards Act.

"Minor offense" would mean that term as defined in Chapter 1 (Definitions) of the Code of Criminal Procedure: a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.

"Physical force" would mean the application of physical techniques or tactics, chemical agents, electronic control devices, or lethal or nonlethal weapons to an individual to overcome resistance or achieve compliance.

## Use of Force Policy

Under the bill, beginning six months after the bill's effective date, each law enforcement agency would have to adopt a use of force policy. The use of force policy would have to include, at a minimum, all of the following:

- A requirement that a law enforcement officer could not use physical force that was greater than that necessary to accomplish any of the following, unless de-escalation techniques had been attempted and failed or were not feasible based on the totality of the circumstances: a) stop an ongoing crime; b) effect a lawful arrest or detention; c) prevent an individual's escape from actual physical custody or from a law enforcement officer who was attempting to take the individual into custody; or d) defend the law enforcement officer or an individual from what the officer reasonably believed to be an imminent use of physical force against the officer or an individual.
- A continuum detailing the levels of a law enforcement officer's response that was proportional in response to an individual's action or resistance level or, if applicable, proportional in response to the threat of imminent harm to an officer or an individual.
- A requirement that a law enforcement officer would have to give a verbal warning, whenever it was practical and safe to do so, before using physical force.
- A requirement that deadly force could not be used solely to protect property or against an individual who posed a risk of bodily harm only to himself or herself.
- A requirement that a law enforcement officer would have to exhaust all other alternatives that were reasonable and proportional considering the totality of the circumstances, including any imminent threats to the safety of the law enforcement officer and other individuals, the time available to react, and the severity of the crime, before resorting to the use of deadly force.

For purposes described above, "reasonable alternatives" would mean the use of less-lethal force or nonforce tactics or techniques that were intended to stabilize a situation and reduce the immediacy of the threat. Reasonable alternatives would include any of the following:

- The use of cover, containment, or tactical repositioning.
- Deployment of special equipment or resources to the scene, such as the deployment of mental health professionals trained in crisis intervention.
- Requesting additional law enforcement officers at the scene.
- Surveillance of an individual suspected to have committed a crime.
- Verbal communication with the individual against whom the deadly force was to be used.

Additionally, the use of force policy would have to include a requirement that a law enforcement officer could use or attempt to use deadly force only when necessary to achieve either of the following:

- Effect an arrest when there was probable cause to believe that the individual had committed an offense involving the death or serious bodily harm of another individual or the law enforcement officer had reason to believe that the individual would cause death or serious bodily harm to another individual or the law enforcement officer if not immediately apprehended, and the law enforcement officer's use of deadly force did not create a significant risk of death or serious bodily harm to another individual other than the individual against whom the deadly force was to be used.
- Protect the law enforcement officer or another individual from an imminent threat of death or serious bodily harm.

For purposes of the Act, a threat would be imminent if the individual who posed the threat reasonably appeared to have the present ability, opportunity, and intent to immediately cause death or serious bodily harm to a law enforcement officer or another individual.

Nothing in the Act would prohibit a law enforcement agency from adopting a policy that exceeded the Act's requirements.

Each law enforcement agency would have to update its policy continuously using the MCOLES subject control continuum and ensure that its updated policy complied with the Act and was consistent with case law precedent.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have a moderate fiscal impact on State and local law enforcement, as it would require law enforcement agencies to develop policies and procedures on the use of force, following standards prescribed in the bill. Developing procedures and use-of-force policies could result in additional administrative and in-house training costs for State and local law enforcement agencies, and for MCOLES to develop training curricula that reflected the bill's requirements, at a cost that cannot be determined at this time.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.